UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Re:

Gerald N. Butler,
Debtor.

CHAPTER 7

Bky. 3-93-4300

Norman Goldetsky and
Percy Greenberg,
Plaintiffs.

vs.

Adv. 3-93-286

Gerald N. Butler,
Defendant.

ORDER FOR JUDGMENT

This matter came on for trial on January 3, 1994, on Plaintiffs' complaint objecting to dischargeability of their debt under 11 U.S.C. Sections 523 (a)(2)(B) and (a)(6); and, in the alternative, objecting to the Debtor's general discharge under 11 U.S.C. Sections 727(a)(2), (a)(3), and (a)(4). Appearances are noted in the record. Based on the evidence heard and received at trial; written and oral arguments of the parties; and, being fully advised in the matter; the Court now makes this ORDER pursuant to the Federal and Local Rules of Bankruptcy Procedure.

I.
STATEMENT OF THE CASE.

Gerald Butler delivered a false financial statement to the Plaintiffs in May, 1989, in connection with his refinancing a partnership vendee's interest in a contract for deed. The financial statement overstated Mr. Butler's net worth by at least $8,000,000. The refinanced contract was later breached and, in 1992, the Plaintiffs, who were the contract vendors, obtained a judgment against Mr. Butler in the amount of $192,836.68, on a limited personal guarantee. The judgment has not been collected, and the Plaintiffs seek judgment in this proceeding that the debt is nondischargeable under 11 U.S.C. Section 523(a)(2)(B). For the reasons stated in the opinion, the Court rules in Mr. Butler's favor on this claim, finding that the Plaintiffs did not detrimentally rely upon the false statement of financial condition.

Alternatively, the Plaintiffs seek judgment denying Mr. Butler's general discharge under 11 U.S.C. Section 727(a)(2)(A), (a)(3) and (a)(4). The Plaintiffs claim that, prepetition, Mr. Butler fraudulently concealed an interest in a partnership, known as JERO Partnership II; and, that he fraudulently omitted his partnership interest from his bankruptcy schedules. They also claim that Mr. Butler failed to keep adequate records of his business dealings generally, so that his pre-bankruptcy business affairs could be reasonably ascertained. For the reasons stated in the opinion, the

Court rules in favor of the Plaintiffs on these claims and orders that the discharge be denied.

II.

NONDISCHARGEABILITY.

General Business and Financial History of the Debtor.

Gerald Butler was in the real estate business in the 1980s and the early 1990s, focusing on commercial development, residential apartments, and undeveloped land. He was a real estate broker, but referred to himself as a salesman and developer.

Mr. Butler was often involved on both sides of the numerous real estate transactions that he participated in. Typically, he would represent a seller as broker in a transaction; and, he would organize an investment partnership or corporation to purchase and own the project sold. His commission on the sale would serve as his individual investment in the acquiring entity, and it would usually provide him a controlling interest in the purchase.

Mr. Butler maintained a fanciful financial statement in connection with his business affairs. By December, 1988, he scheduled numerous interests in properties that largely provided the basis for a claimed net worth of $11,000,000. A reasonable liberal estimate of his net worth at the time might have been $3,000,000. A conservative assessment would have been much less.

His interest in an undeveloped parcel of land in Hawaii, shown on the December, 1988, financial statement, provides a typical example of Mr. Butler's unrealistic assessment of his financial condition. In 1987, Mr. Butler served as broker for the seller of this property, known as the Lawai Highlands property. He also was involved in the purchase. Mr. Butler successfully solicited seven other individual investors and formed the Lawai Highlands Land Corporation to acquire the property. He became the majority shareholder of the corporation by investing the real estate commission that he earned from the seller in the transaction. The property sold for $300,000. The record does not disclose the amount of Mr. Butler's commission.

Mr. Butler claims that he made other contributions to Lawai Lands Corporation besides his commission on the sale. He testified at trial that he invested up to $50,000 of his own funds in the corporation to cover what he referred to as "shortfalls". And, he points to a promissory note that he issued to the corporation for $285,000, executed on May 1, 1987. The note was to be payable, however, only at subsequent sale of the property; and then, only out of profits or dividends that might otherwise be due him as shareholder of the corporation.

Mr. Butler listed his personal equity in Lawai Highlands at $2,612,500, in the December 1988, financial statement. Nothing of significance had been done with the property since its acquisition, and it remained the corporation's only asset. The value that he placed on his fifty-five percent interest was supposedly based on anticipated income that the property might have produced, assuming full development for highest and best use.

And so it was with most of Mr. Butler's scheduled property interests that made up the bulk of his stated equity on the various financial statements that he issued from time to time. Mr. Butler's "equity" was, in large part, leveraged "blue sky."

Dealings With Plaintiffs.

Not all of his interests were of marginal value, though. In August of 1985, Mr. Butler formed a partnership, Crown Partners III, with two other individuals, to purchase a commercial property, known as the Crown Iron Works, from the Plaintiffs. Terms of the sale were $151,500 cash, and $1,123,500 contract for deed. The property was a

quality office, warehouse and manufacturing facility. Crown Iron Works generated sufficient revenues to service the debt against it, which included two mortgages, taxes, and an additional contract amount.

Yet, Crown Partners III defaulted on the contract numerous times over the years subsequent to the purchase. Upon each default, the Plaintiffs would serve a notice of cancellation on the partnership. Typically, the defaults would be cured and the contract reinstated at the last moment, or other acceptable arrangements would be made. But on the seventh default, in March of 1989, the partnership could not timely cure. By then, Mr. Butler was the sole partner in Crown Partners III.

Despite the fact that Crown Iron Works was arguably worth $2,200,000, and the total debt against it was just over $1,000,000, the Plaintiffs did not wish to take back the property. They chose to negotiate with Mr. Butler for yet another cure, and for a restructuring of the contract. This time, though, the Plaintiffs insisted that Mr. Butler partially guarantee performance, and that he furnish them a personal financial statement.

The statement that Mr. Butler produced in the transaction was the December, 1988, financial statement that boasted a net worth exceeding $11,000,000. But, the copy that he furnished was incomplete, most notably by the absence of the signature page. Nonetheless, the Plaintiffs accepted the financial statement and closed the transaction. That deal ended in default as well. The Plaintiffs eventually took the property back, beginning in April of 1990, by obtaining the appointment of a receiver; and, ending in May 1991, by cancelling the contract.

In 1992, the Plaintiffs sued Mr. Butler on his guarantee and obtained a default judgment against him in the amount of $192,836.68 for "waste" of the property, and for other liability of Crown Partners III that had been incurred prior to the cancellation. Mr. Butler filed for bankruptcy on September 3, 1993. The judgment has not been collected.

The 11 U.S.C. Section 523(a)(2)(B) Claim.

The Plaintiffs claim that the financial statement that Mr. Butler furnished them in 1989, was fraudulent regarding his net worth; and, that their state court judgment is a nondischargeable debt under 11 U.S.C. Section 523 (a)(2)(B). The statute provides:

> Section 523. Exceptions to discharge
>
> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt --
>
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by --
>
> (B) use of a statement in writing --
>
> (i) that is materially false;
>
> (ii) respecting the debtor's or an insider's financial condition;
>
> (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

> (iv) that the debtor caused to be made or published with intent to deceive...

The financial statement was fraudulent, despite the contrary assertions of Mr. Butler. But, that alone does not establish nondischargeability of the debt owing to the Plaintiffs. The Plaintiffs must show that they relied on the falsehood to their detriment. The Plaintiffs claim that, had the financial statement been accurately represented, they would not have restructured the contract in May of 1989. They insist that they would have taken the property back instead. The claim is disingenuous.

The Plaintiffs did not wish to cancel the contract and take back the property in 1989. They preferred to renegotiate the contract, even in light of the numerous defaults that had occurred prior to that time. Furthermore, the value of Crown Iron Works was $2,200,000, while the total debt against it was no more than $1,200,000. The Plaintiffs were substantially over secured as it was, and they added to their security by taking an assignment of rents in the transaction. The Plaintiffs were well protected without Mr. Butler's guarantee.

The financial statement served no purpose unrelated to the guarantee. Plaintiff Norman Goldetsky testified that the reason he demanded a financial statement of Mr. Butler was to assure that Butler would have the ability to pay on the guarantee, if that should be necessary. But the Plaintiffs accepted a purported financial statement that was six months old; and, that was incomplete on its face, with the most notable omission being Mr. Butler's signature. More importantly, the Plaintiffs do not dispute that Mr. Butler arguably had a net worth of at least $3,000,000 at the time. The guarantee covered only such default that might exist at the time of a contract cancellation. Specifically excluded from the guarantee, was default that might exist by exercise of the contract's acceleration clause.

The Plaintiffs' present assertion that they would not have renegotiated the deal had Mr. Butler represented his net worth at $3,000,000, is simply not credible. Their vastly over secured position; the limited nature of Mr. Butler's personal guarantee; and, Plaintiffs' historical resistance to taking the property back; all suggest that the Plaintiffs would have closed the deal regardless. Although the representation of net worth was materially false, the Plaintiffs did not detrimentally rely on the gross overstatement. They would have restructured the contract anyway, had Mr. Butler represented a more modest, and arguably defensible, $3,000,000 net worth.

III.

DENYING THE DISCHARGE FOR FRAUD AND FALSE OATH.

The Shifting Interests of JERO Partnership II.

Mr. Butler regularly fashioned byzantine deals, using an array of partnerships and corporations, that often involved employees and associates. While some of these arrangements were designed for tax purposes, others seemed designed for more mischievous purposes. His dealings with a property known as the G.E. Building present an example of the latter.

The G.E. Building was purchased in 1989, by JERO Partnership II, a partnership initially consisting of Mr. Butler and a man named William Barbush. Each purportedly held a fifty percent interest in the partnership. The purchase price was $850,000. The partnership paid $150,000 cash, and obtained mortgages in the amount of $700,000 from

Banker's Trust Co. and First Trust National Association for the balance.

In January of 1991, Mr. Barbush transferred his partnership interest to American Inland Corporation, a Minnesota corporation ("American Inland, Minnesota"). The corporation participated in the transaction through Mr. Butler, who claimed to act as its president. The next month, Mr. Butler transferred his personal partnership interest to an employee, Robert Holupchinski. The partners of JERO Partnership II were now purportedly American Inland, Minnesota, and Mr. Holupchinski. Each supposedly owned a fifty percent share.

In July of that same year, Mr. Butler, acting as president of American Inland, Minnesota, transferred that corporation's interest in JERO Partnership II to American Inland Corporation, a Colorado corporation ("American Inland, Colorado"). Mr. Butler's son, who was then thirteen years old, was the sole shareholder of American Inland, Colorado. Not surprisingly, Mr. Butler also signed the transfer agreement as president of American Inland, Colorado. JERO Partnership II was now supposedly owned by Mr. Holupchinski and American Inland, Colorado, each a fifty percent shareholder. But, Mr. Butler managed and controlled both JERO and its only asset, the G.E Building. And, he treated both as though they belonged to him personally.

In 1993, Mr. Butler caused JERO Partnership II to appropriate a $100,000 fire insurance settlement from a fire in the G.E Building; and, to lend it to Mr. Butler. The money was not repaid.

The banks sued to foreclose their mortgages on the G.E. Building in March of 1994, naming JERO Partnership II and Mr. Holupchinski personally. Mr. Holupchinski responded by repudiating the earlier partnership transfer from Mr. Butler. Mr. Butler then negotiated a sale of the building for $350,000, and obtained a satisfaction and general release from the banks for payment of the same amount. In negotiating the sale, Mr. Butler took back a five year lease of the building with an option to repurchase it for $700,000, all in the name of American Inland, Colorado. In the meantime, Mr. Butler personally receives a monthly management fee in the amount of $2300 for managing the property.

The Objection Under 11 U.S.C. Sections 727(a)(2) and (a)(4).

Mr. Butler failed to disclose his interest in JERO Partnership II during a deposition taken by the Plaintiffs, in part to discover assets, on October 13, 1992. Mr. Butler also failed to mention his interests in JERO Partnership II; the G.E. Building; American Inland, Minnesota; or, American Inland, Colorado, in his bankruptcy schedules. The Plaintiffs claim that he fraudulently concealed a continuing interest in JERO Partnership II within one year prior to the filing of his bankruptcy case; and, that he made a false oath or account in the filing of his petition and schedules by omitting his interest.

11 U.S.C. Section 727(a)(2) and (a)(4) provide, in pertinent part:

> Section 727. Discharge
>
> (a) The court shall grant the debtor a discharge, unless --
>
> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed --

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition...

(4) the debtor knowingly and fraudulently, in or in connection with the case --

(A) made a false oath or account...

Mr. Butler denies that he fraudulently concealed an interest in JERO either before or in connection with the filing of his bankruptcy case. He insists that he had no interest in the partnership. But in the event that he did have an interest, he argues, it was only a technical one, without value. Omission of JERO from his schedules was at worst an innocent mistake, he claims. Mr. Butler's denials and assertions are not persuasive.

The history of JERO Partnership II, especially the pattern of transfers of the partnership interests, leads to the irresistible conclusion that Mr. Butler, at all times prior to the bankruptcy filing, held the entire equitable interest in it. Despite his attempt at trial, Mr. Butler was unable to furnish any rational explanation for the bizarre series of transfers that would indicate any purpose for them other than to conceal his personal, continuing interest. Indeed, the continuing nature of his interest in JERO Partnership II, and the concealing purpose of the transfers, are so obvious from the record that these matters are not worthy of extended discussion.

Intentional failure to disclose the interest in JERO upon inquiry of a pursuing creditor within one year prior to filing, would ordinarily be sufficient to bar Mr. Butler's discharge under 11 U.S.C. Section 727(a)(2)(A). But that is not how the claim was presented. While the Plaintiffs complain of Mr. Butler's failure to disclose his interest in JERO during the October, 1992, deposition, they presented and tried the claim on the theory that the failure to disclose resulted in a nondischargeable debt under 11 U.S.C. Section 523(a)(6). During oral argument, the Plaintiffs moved to amend the complaint to allege that the failure to disclose should bar the discharge under 11 U.S.C. Section 727(a)(2)(A). The Court took the matter under advisement at the trial and now denies the motion as untimely.

Continuing concealment by Mr. Butler through the transfers themselves, within one year prior to the bankruptcy filing, supports denial of discharge under 11 U.S.C. Section 727(a)(2)(A). See: Thebodeaux v. Oliver, 819 F.2d 550 (5th Cir. 1987). Intentional omission of his interest in JERO from schedules filed with the petition, compels denial of Mr. Butler's discharge under 11 U.S.C. Section 727(a)(4). A debtor who commits a fraud upon the court, whether by false oath or otherwise, is not entitled to a discharge. These allegations were clearly made, presented and proved at trial.

Mr. Butler insists that the partnership interest had no value and, therefore, he should not be held accountable for his failure to disclose it. But the complexities of the concealment, and his post petition self-dealing of the interest, belie the assertion of no value. Besides, ordinarily, fraud committed on the court will result in barring the discharge, even where the debtor marginally benefits from the fraudulent conduct. See: Paletine Nat'l Bank v. Olson, 916 F.2d 481, 484 (8th Cir. 1990).

IV.

DENYING THE DISCHARGE FOR FAILURE TO KEEP RECORDS.

Lost in the Fog, Mist, and Mirrors.

Mr. Butler listed a negative net worth of $5,588,000, in his bankruptcy schedules. Although he claimed to have had numerous interests that were cumulatively worth many millions of dollars in the 1980s and early 1990s, he kept few records to document his holdings or their dispositions. The records that exist are inconsistent and contradictory in many instances. The disarray of records, and failure to record many transactions at all, make impossible an objective, reliable, reasonable accounting of Mr. Butler's financial affairs leading up to his bankruptcy. These are a few examples of the contradictions and omissions.

Lawai Highlands Corporation. Mr. Butler acquired his interest in Lawai Highlands in 1987. His actual cash invested in the property was approximately $50,000. One year later, he valued his fifty five percent interest in the property at $2,612,500 in a December, 1988, financial statement. A month later, in January 1989, Mr. Butler assigned his interest in Lawai Highlands to an individual named Roger Tschida, one of the original investors, "for $150,000 in various loans and interest." Then, two and one-half years later, in July, 1991, he transferred his interest again, this time to an individual named Teresa Clancy, for $43,000 in debt satisfaction. Mr. Butler's tax returns for the years 1989 through 1991, show a continuing interest in Lawai Highlands, and do not reflect either of the transfers.

American Inland Corporation, a Minnesota Corporation. In 1980, Mr. Butler was the sole shareholder of American Inland Corporation, Minnesota. He changed the name of the corporation in May of that year to AIC Corporation. Sometime prior to 1988, a long-time acquaintance and business associate, Theodore Johnson, became a shareholder in AIC. In October of 1988, Mr. Butler relinquished his shares, and Mr. Johnson became the sole shareholder of AIC. Mr. Butler had no connection of record with AIC since that time. His use of American Inland Corporation, Minnesota, to receive the transfer of William Barbush's JERO Partnership II interest in January of 1991, seemingly makes no sense; nor does Mr. Butler's designation of himself as president of American Inland Corporation in the transaction, seem to make sense.

The Theodore Johnson - Gerald Butler Connection. The business relationship and dealings between Mr. Butler and Theodore Johnson remain the greatest mystery concerning Gerald Butler's financial affairs prior to bankruptcy. Apparently, Mr. Butler and Mr. Johnson knew one another since grade school. They were friends and business associates. The two were involved in numerous investments together, valued by them in the millions of dollars. Yet, few records were kept. Those that have surfaced are incomplete and inadequate.

Most of their joint arrangements were undisclosed and unrecorded. Typically, the ventures would involve an understanding that they would divide equally any of the profits that would result from investments they made together. The relationship between Mr. Butler and Mr. Johnson in these ventures was outside the parameters of the partnerships or other entities that were publicly presented in the transactions. The relationship was a closely guarded secret. No one, other than themselves, knew of their joint involvement in particular investments fronted by only one of them. There exist no documents that evidence the details of these arrangements or the property that was included in them.

In January of 1990, Mr. Butler and Mr. Johnson decided to settle their joint affairs. Though they acknowledge that they entered into an agreement terminating their business relationships, neither Mr. Butler nor Mr. Johnson has been able to produce a final, executed copy

of any written document memorializing the settlement. Mr. Butler did produce an unexecuted, marked-up copy of a document purporting to be an agreement between the men, entitled "Partnership Termination and Stock Transfer Agreement" ("Termination Agreement").

But, he insists that the Termination Agreement was simply a "working document" for discussion purposes, and that it was not intended as a final resolution of the business relationship. Nonetheless, the Termination Agreement identifies and provides for the exchange of interests in thirteen properties and two corporations in which Mr. Butler and Mr. Johnson agreed to settle their respective rights and interests.

The details of the actual settlement are not memorialized and have not been explained. But, according to both Mr. Johnson and Mr. Butler, the resolution involved more than settling the thirteen properties and two corporations. They insist that four promissory notes in favor of Mr. Butler in the total amount of $777,500, were also cancelled. The notes were issued in 1987 by either AIC Corporation or Mr. Johnson, and were payable on demand. None of the notes were referred to in the Termination Agreement.

There exists no tangible evidence that the notes have ever been paid, satisfied, or cancelled. Mr. Butler's federal tax return for 1990, reflects none of the settlement transfers, payments, satisfactions, and cancellations, whether identified in the Termination Agreement or described by Mr. Butler and Mr. Johnson in their testimony.

The Objection Under 11 U.S.C. Section 727(a)(3).

The Plaintiffs seek judgment barring discharge under 11 U.S.C. Section 727(a)(3) for failure by Mr. Butler to keep adequate records of his business affairs. The statute provides:

> Section 727. Discharge
>
> (a) The court shall grant the debtor a discharge, unless --
>
> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

Mr. Butler is a sophisticated businessman, who claimed to have interests valued in the millions of dollars during the 1980s and early 1990s. Absent some other reasonable explanation, one can only conclude that his failure to keep adequate records was intentional, so that his true financial condition and the true nature of his business transactions could not be readily ascertained. No other reasonable explanation has been offered.

Mr. Butler's failure to keep adequate records of his business affairs has certainly not been justified under the circumstances of the case. Indeed, under the circumstances, failure to keep adequate records should bar his discharge pursuant to 11 U.S.C. Section 727(a)(3). See: In Re Pulos: 168 B.R. 682 (Bankr. D. Minn. 1994).

V.

DISPOSITION.

Based on the foregoing, it is hereby ORDERED:

1) Plaintiffs' motion to amend Count II of their complaint is denied.

2) Gerald Butler is entitled to judgment that his debt to Plaintiffs Norman Goldetsky and Percy Greenberg is not nondischargeable under 11 U.S.C. Section 523(a)(2)(B);

3) Gerald Butler is denied his general discharge in his bankruptcy case 3-93-4300, pursuant to 11 U.S.C. Sections 727(a)(2)(A), (a)(3), and (a)(4).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 17, 1995.

By The Court:

DENNIS D. O'BRIEN
CHIEF U.S. BANKRUPTCY JUDGE

(1)
The 11 U.S.C. Section 523(a)(6) claim was dismissed at the conclusion of the Plaintiff's case in chief, and will not be dealt with in this opinion.

(2)
Mr. Butler later purportedly conveyed his entire interest in Lawai Highlands Corporation in 1991, along with other property, in satisfaction of a $43,000 obligation.

(3)
Although the record is not clear regarding the reasons for the numerous defaults, it appears that the revenues produced by the property were diverted to other, more speculative, projects, generally to keep them afloat.

(4)
Mr. Butler's December 30, 1988, financial statement listed the property at a value of $2,200,000. The statement was furnished to the Plaintiffs in connection with restructuring the contract for deed in 1989. The Plaintiffs, who had special knowledge of the property, apparently believed the value to be accurate at the time they received the statement. And, while they challenge the accuracy of the financial statement in numerous other respects in this proceeding, they have not challenged valuation of the Crown Iron Works property.

(5)
The guarantee was limited to payments and other obligations in default
at any subsequent cancellation. It specifically excluded liability for any amount that might result from acceleration of the debt.

(6)
The record does not account for the entire amount of this judgment. Approximately $75,000 was for such things as misappropriation of rents after the appointment of the receiver; damage to the facility that had resulted from failure to adequately maintain the property; failure to pay certain utility bills; and attorney's fees incurred by the Plaintiffs in the receivership litigation.

(7)
Mr. Butler insisted at the trial that the financial statement actually
understated his net worth by close to a million dollars in 1989, when it was furnished to the Plaintiffs.

(8)
Apparently, Mr. Barbush had put up the $150,000 cash for the

purchase.
Mr. Butler testified that Mr. Barbush had been paid $168,000 by the partnership as of January, 1991, and simply wanted out of the partnership. The explanation is somewhat lacking in that it does not account for why Mr. Barbush would simply walk away from a presumably valuable interest in return for nothing. Apparently, the only consideration for the transfer was the buyer's assumption of the seller's share of the liabilities and obligations of the partnership.
(9)

According to corporate records, American Inland, Minnesota, did not exist at the time. Its name had been changed to AIC Corporation in 1981. Mr. Butler was not an officer or shareholder of record in AIC Corporation in 1991.
(10)

Mr. Butler testified at trial that the consideration he received for the transfer to Mr. Holupchinski was satisfaction of a $54,000 note; and, waiver of commissions and management fees that he owed to Mr. Holupchinski in the amount of $18,000. Mr. Holupchinski later repudiated the transfer after the mortgagee banks named him personally in a foreclosure action on the G.E. Building, seeking a deficiency judgment against him.
(11)

Mr. Butler continued to claim his interest in the partnership, and to schedule his passive losses, on his personal federal income tax returns for 1991 and 1992
(12)

Mr. Butler used the proceeds of the "loan" to pay a settlement to the Chapter 7 trustee of a Colorado bankrupt project that he had been involved in, known as Grand on Avon. The settlement was a resolution of claims by the trustee that Mr. Butler and Mr. Barbush had misappropriated funds of the debtor-
in-possession while the case had been pending in a Chapter 11 proceeding.
(13)

11 U.S.C. Section 523(a)(6) provides that a debt for willful and malicious injury to another, or to another's property, is nondischargeable.
(14)

In this case, continuing to conceal and self-deal the interest after the filing should bar the discharge under 11 U.S.C. Section 727(a)(2)(B) as well. But the Plaintiffs did not seek to bar the discharge under that section of the statute.
(15)

Mr. Johnson testified for several hours at the trial, unfortunately without credibility. He presented himself as recalcitrant, antagonistic, evasive, and generally hostile to any significant questions involving his financial dealings with Mr. Butler. He provided no meaningful, reliable information regarding his dealings or relationship with Mr. Butler.